



# Creating a Federal Advisory Committee in the Executive Branch

**Wendy Ginsberg**

Analyst in American National Government

October 19, 2015

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

R44232

**CRS REPORT**

Prepared for Members and  
Committees of Congress

## Summary

Federal advisory committees allow members of the public to formally provide advice and recommendations to the executive branch of the federal government. These advisory committees, of which about 1,000 operate at any given time, provide advice and recommendations on issues ranging from how to support trade goals of small and minority-owned businesses to which drugs best treat arthritis pain. Many federal advisory committees are required to operate pursuant to the open meetings and records access requirements of the Federal Advisory Committee Act (FACA).

Advisory committees are established for a number of reasons, including to acquire new ideas from outside experts, remove certain controversial topics from politically charged arenas, and to help reduce the workload of Members of Congress.

Congress has an important role in the establishment of federal advisory committees. Of the active federal advisory committees in FY2014, 705 (71.3%) were required or authorized by Congress—515 (52.1%) of which were required by statute while 190 (19.2%) were authorized, but not required, by statute. Other federal advisory committees were established by executive branch agencies or the President.

A committee's establishment and mandate, membership requirements, powers, funding, and termination are some of the many components that Congress may consider when establishing an advisory committee.

This report provides a brief overview on how Congress can establish federal advisory committees, and provides some considerations as to why a federal advisory committee may or may not be an appropriate mechanism for a particular policy or funding question. It presents data on the number of active committees established by Congress with special emphasis on the committees established in FY2014. This report concludes by presenting a list of the federal advisory committees currently proposed for establishment in legislation in the 114<sup>th</sup> Congress.

## Contents

Introduction .....	1
Why Establish a Federal Advisory Committee?.....	2
Congress's Role in Establishing FACA Committees.....	4
Considerations When Creating a FACA Committee .....	5
Establishment and Mandate .....	6
Membership.....	7
Compensation and Travel .....	8
Committee Staff .....	8
Committee Reports.....	9
Committee Authorities .....	9
Bylaws and Procedures .....	9
Funding .....	10
Committee Termination.....	10
Advisory Committee Establishment in the 114 <sup>th</sup> Congress .....	10

## Figures

Figure 1. Percentages of Active Federal Advisory Committees by Establishment Authority, FY2014 .....	4
--	---

## Tables

Table 1. FACA Committees Established by Congress in FY2014 .....	5
Table 2. Legislation Seeking to Establish Advisory Committees, 114 <sup>th</sup> Congress .....	11

## Contacts

Author Contact Information .....	11
Acknowledgments .....	11

## Introduction

Congress, Presidents, and executive branch agencies use federal advisory committees to gain expertise and policy advice from individuals outside the federal government. Federal advisory committees are created to bring together various experts—often with divergent opinions and political backgrounds—to examine an issue and recommend statutory, regulatory, or other policy actions. Federal advisory committees are one of only a few formalized mechanisms for private-sector citizens to participate in the federal policymaking process. FACA committees are prohibited from creating policy or issuing regulations.<sup>1</sup> Their role is to remain strictly advisory.

Federal advisory committees can be called task forces, panels, commissions, working groups, boards, councils, conferences or other titles.<sup>2</sup> Many of them are required to operate pursuant to the requirements of the Federal Advisory Committee Act (FACA), which was enacted to make executive branch advisory committee operations more accessible and transparent.<sup>3</sup> For example, FACA requires all applicable advisory committees to file a charter prior to their operation. The charter is required to include the committee's objectives, the support agency, the committee's duties, the estimated operating costs, the estimated number of committee meetings, and the anticipated termination date, and other information. Additionally, all advisory committee meetings that are subject to FACA are presumed to be open to the public, with certain specified exceptions.<sup>4</sup> Adequate notice of meetings must be published in advance in the *Federal Register*. Subject to certain records protections provided in the Freedom of Information Act, all papers, records, and minutes of meetings must be made available for public inspection. Membership must be “fairly balanced in terms of the points of view represented and the functions to be performed,” and the committee should “not be inappropriately influenced by the appointing authority or by any special interest.”<sup>5</sup>

As noted above, federal advisory committees can be established either by Congress, the President, or an agency head. Congress has the power to establish a committee in two ways. First, Congress can specifically *mandate* that the committee be established by law. Second, Congress can *authorize* the establishment of a committee, but it is up to the designated agency to decide whether to create it. Congress may decide to establish a federal advisory committee for a variety of reasons, among them

- to allow the federal government to collect the experts on a particularly technical or scientific topic in one location to debate the best policy outcomes;

---

<sup>1</sup> A FACA committee is a federal advisory committee that is required to operate pursuant to the requirements of the Federal Advisory Committee Act. Congress may establish committees that operate outside of FACA's transparency requirements. Committees that are not FACA committees may be more difficult to track and are not included in the General Services Administration's FACA Database, which provides aggregated information about the operations and costs of all FACA committees.

<sup>2</sup> U.S. President, “Prescribing Regulations for the Formation and use of Advisory Committees,” 27 *Federal Register* 1875, February 26, 1962.

<sup>3</sup> 5 U.S.C. (FACA) Appendix. For more information on FACA and the operations of federal advisory committees, see CRS Report R40520, *Federal Advisory Committees: An Overview*, by Wendy Ginsberg. See also the General Services Administration Committee Management Secretariat, “FACA Brochure,” at <http://www.gsa.gov/portal/content/101010>.

<sup>4</sup> Pursuant to 5 U.S.C. (FACA) Appendix §10(d), the President or the head of the affiliated agency may determine that certain meetings may be closed to the public. National security, personal privacy, and trade secrets are among the reasons a FACA committee meeting might be closed to the public.

<sup>5</sup> 5 U.S.C. (FACA) Appendix §5(2).

- to ensure that appropriate stakeholders of a particular policy arena have the opportunity to voice their opinion to policymakers;
- to attempt to remove a controversial policy option or funding decision from a highly charged political arena; or
- to reduce congressional or executive branch workloads.

This report provides information on Congress's role in creating federal advisory committees pursuant to FACA. Additionally, this report can assist Members and staff when they are deciding whether a federal advisory committee is the appropriate mechanism to assist in policymaking, grantmaking, or other arenas in which nonfederal expert advice could assist. Finally, this report provides analysis of some primary components of federal advisory committee design, including examples of federal advisory committee structure and operations.

## Why Establish a Federal Advisory Committee?

Federal advisory committees can be established for a variety of reasons. Many of FACA's provisions were intended to provide an "opportunity for the public to learn either about [committee] deliberations and recommendations or about the information on which [committees] base those recommendations."<sup>6</sup> FACA committees, therefore, can be especially helpful in policy arenas where public access to and participation in debates and discussions are as important as (or, possibly more important than) policy recommendations.

In an examination of advisory commissions established by presidential directive, one scholar stated that these advisory commissions have traditionally allowed a President to

deflect blame, buy time, and give the appearance of action on issues that are too politically charged, too difficult, to solve.<sup>7</sup>

The same study noted that commissions

are used by presidents to garner greater public support for a policy to which the president is already committed; show symbolic concern over a situation at the highest level of government; establish a fact base for others to use; respond to crises; deflect political heat from the president and allow passions to cool when issues become explosive; overcome the "stovepipes" and parochial thinking of the permanent bureaucracy; gather more information about a problem and its policy alternatives; forge consensus among the interests represented on the commission itself; and change the hearts and minds of men.<sup>8</sup>

The study attempted to group commissions into three categories: agenda commissions, which aim to attract support and attention to presidential policy initiatives; information commissions, which are designed to give "new ideas, new facts, and new analysis to policymakers"; and political

---

<sup>6</sup> U.S. Congress, Senate Committee on Government Operations, *The Federal Advisory Committee Act*, report to accompany S. 3529, 92<sup>nd</sup> Cong., 2<sup>nd</sup> sess., September 7, 1972, S.Rept. 92-1098 (Washington: GPO, 1972), p. 6. The report continued: "The lack of public scrutiny of the activities of advisory committees was found to pose the danger that subjective influence not in the public interest could be exerted on the Federal decisionmakers."

<sup>7</sup> Amy B. Zegart, "Blue Ribbons, Black Boxes: Toward a Better Understanding of Presidential Commissions," *Political Studies Quarterly*, vol. 34, no. 2 (June 2004), p. 372. Zegart specifically refers to commissions established by Congress or presidential directive that include at least one member who is of the general public. Generally, these commissions appear to qualify as FACA committees, but some commissions in her analysis were established and operated prior to FACA's enactment. Nonetheless, Zegart findings appear to apply to FACA committees established by presidential directive, as well as those established by agency heads and Members of Congress.

<sup>8</sup> Ibid.

constellation commissions, which seek to “foster consensus, compromise, and cooperation in a policy domain.”<sup>9</sup>

Another researcher who examined the impetus for committee creation found that some committees are created to acquire new ideas from outside experts. He added, however, that committees may be created to allow politicians to avoid blame for issues that are too cumbersome or too politically charged. Moreover, he stated that Members of Congress may create committees because of the immense workload of legislators. Creating an advisory committee can “pare down Congress’s workload to more manageable dimensions or to handle and manage a problem in a timely manner.”<sup>10</sup>

Since FACA’s enactment, scholars and practitioners of government have debated whether advisory bodies, in fact, increase public interaction with the federal government.<sup>11</sup> Other debates continue over whether advisory committees have a positive effect on the federal government,<sup>12</sup> or if they are a symptom of a federal government that is not performing properly.<sup>13</sup>

Two scholars have found evidence that advisory committees can be useful to federal agencies, especially those that have a technical or scientific focus. Agencies like the FDA consult “advisory committees when in-house information processing is relatively costly and the political stakes of its decisions are high.” The highly valued information and expertise from advisory committees can be impactful when agencies decide whether to approve a drug, device, or other committee recommendation.<sup>14</sup>

In March 2012, the Government Accountability Office (GAO) released a report that noted four practices that may influence the utility of an advisory body.<sup>15</sup> The four practices are

1. securing clear agency commitment;<sup>16</sup>
2. finding a balance between responsiveness to the agency and independence;<sup>17</sup>
3. leveraging resources through collaboration with similar groups;<sup>18</sup> and

---

<sup>9</sup> Ibid.

<sup>10</sup> Colton C. Campbell, “Creating an Angel: Congressional Delegation to Ad Hoc Commissions,” *Congress & The Presidency*, vol. 25, no. 2 (Autumn 1998), pp. 161-182.

<sup>11</sup> Brian C. Murphy, “Implementation of the Federal Advisory Committee Act: An Overview,” *Government Publications Review*, vol. 9 (January-February 1982), pp. 3-27; Jerry Mitchell, “Representation in Government Boards and Commissions,” *Public Administration Review*, vol. 57, no. 2 (March - April 1997), pp. 160-167.

<sup>12</sup> William H. Miller, “Advisory Committee: The Invisible Branch of Government,” *Industry Week*, February 23, 1976, pp. 30-40, 40-45, 47-48; Gary J. Schmitt, “Why Commissions Don’t Work,” *The National Interest*, vol. 15 (Spring 1989), pp. 58-66.

<sup>13</sup> Francis E. Rourke and Paul R. Schulman, “Adhocracy in Policy Development,” *The Social Science Journal*, vol. 26, no. 2 (April 1989), pp. 131-142.

<sup>14</sup> Stéphane Lavertu and David L. Weimer, “Federal Advisory Committees, Policy Expertise, and the Approval of Drugs and Medical Devices at the FDA,” *Journal of Public Administration Research and Theory*, vol. 21, no. 2 (April 2011), pp. 211-237.

<sup>15</sup> U.S. Government Accountability Office, *Federal Advisory Groups: DOT and DOE Can Take Steps to Better Assess Duplication Risk and Enhance Usefulness*, GAO-12-472, March 2012, at <http://www.gao.gov/products/GAO-12-472>.

<sup>16</sup> According to GAO, “[a]gency commitment to advisory groups can be demonstrated by active participation in meetings, open communication with group members, and allocation of resources to the group.” Ibid., p. 14.

<sup>17</sup> According to GAO, “responding to agencies’ needs may help advisory groups produce useful recommendation[s] or reports. But … the advice and recommendations of federal advisory groups should be independent of influence by the entity that created the advisory group.” Ibid., p. 16.

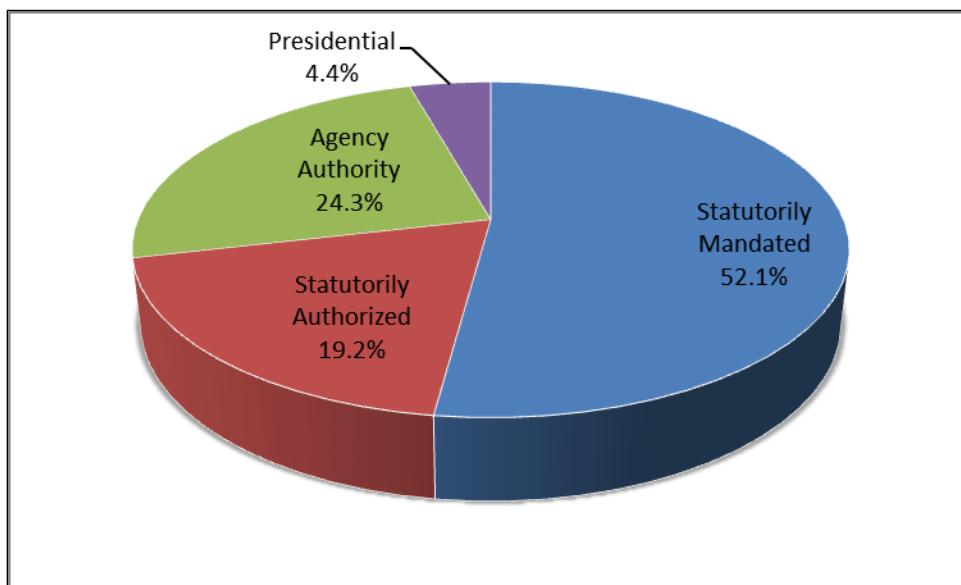
<sup>18</sup> According to GAO, “[c]ollaboration with groups focusing on similar topics may help ensure that groups are not duplicating activities but are instead focusing on the most useful tasks. Similarly, it may help advisory groups leverage (continued...)

4. evaluating the group's usefulness to identify future directions or improvements.<sup>19</sup>

## Congress's Role in Establishing FACA Committees

In any given fiscal year, Congress is the establishing authority for a majority of FACA committees. Of the 988 active federal advisory committees in FY2014, Congress statutorily *mandated* the establishment of 515 (52.1%). Additionally, 190 (19.2%) of the active FACA committees were *authorized*, but not required, by statute.<sup>20</sup> **Figure 1** shows the percentage of total active committees in FY2014 by establishment authority.

**Figure 1. Percentages of Active Federal Advisory Committees by Establishment Authority, FY2014**



**Source:** CRS analysis of the FACA Database, at <http://facadatabase.gov/>.

Within the 988 active advisory committees, 23 were newly established in FY2014. Ten (44%) of the 23 committees were required by statute.<sup>21</sup> **Table 1** lists those 10 committees.

---

(...continued)

existing resources to more quickly obtain information or expertise already possessed by other groups, thereby enhancing the usefulness and efficiency.” Ibid., p. 17.

<sup>19</sup> Agency heads are already required by law to evaluate the utility of each FACA committee on an annual basis. This final practice, therefore, is directed to non-FACA committees. Ibid., pp. 18-19.

<sup>20</sup> Of the remaining active federal advisory committees in FY2014, 240 were established by agency heads and 43 were established by presidential directive. See the FACA Database, at <http://facadatabase.gov/>.

<sup>21</sup> The remaining 13 committees were established by agency authority (10) and presidential directive (3). None of the committees established in FY2014 reported being established as authorized, but not required, by Congress.

**Table I. FACA Committees Established by Congress in FY2014**

In alphabetical order by agency

<b>Committee Name</b>	<b>Establishing Statute</b>	<b>Agency</b>
Appraisal Subcommittee Advisory Committee for Development of Regulations	Dodd-Frank Wall Street Reform and Consumer Protection Act	Appraisal Subcommittee
Commission to Eliminate Child Abuse and Neglect Fatalities	Protect Our Kids Act of 2012	Commission to Eliminate Child Abuse and Neglect Fatalities
Arizona National Scenic Trail Advisory Council	National Trails System Act	Department of Agriculture
Colorado Recreation Resource Advisory Committee	Federal Land Recreation Enhancement Act	Department of Agriculture
Pacific Northwest National Scenic Trail Advisory Council	National Trails Systems Act	Department of Agriculture
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel	National Defense Authorization Act for Fiscal Year 2013, Section 576(a)(2)	Department of Defense
Rehabilitation Research Advisory Council	Rehabilitation Act of 1973, Section 205(a)	Department of Education
Commission to Review the Effectiveness of the National Energy Laboratories	Consolidated Appropriations Act, 2014	Department of Energy
National Advisory Committee on Children and Disasters	Public Health Service Act, Section 2811A	Department of Health and Human Services
Advisory Committee on Increasing Competitive Integrated Employment For Individuals with Disabilities	Workforce Innovation and Opportunity Act, Section 461 / Rehabilitation Act, Section 609	Department of Labor

**Source:** CRS analysis of the FACA Database, at <http://facadatabase.gov/>.

As shown above, Congress plays an important role in the establishment of federal advisory committees. Currently, 71.3% of all active committees were required to be or authorized to be established by Congress.<sup>22</sup>

## Considerations When Creating a FACA Committee

As Congress deliberates the establishment of an advisory committee, Members and staff may take into consideration its goals and potential structure. Among the considerations pertinent to the establishment of an advisory committee and to its composition, operation, and effectiveness are the following: defining the committee's purpose; establishing committee membership; defining committee duties; setting the committee's mission; allocating proper funding, support staff, and office space; mandating the committee's reporting requirements; and determining a committee sunset date. Below are a series of possible considerations of the various elements of advisory committees for Members or staff who seek to establish an advisory committee by statute.

<sup>22</sup> In some cases, a committee may finish its work and remain inactive for much of the fiscal year. In other cases, a committee may have been established by statute without a sunset date, but have completed its statutory mission. In these cases, a committee may exist in name only in the FACA Database, and be listed as an inactive committee. When a committee reports as inactive, its members no longer meet nor can it expend funds).

## Establishment and Mandate

Statutes establishing advisory committees can be explicit and detailed about mission and operations or they can provide a framework within which the host agency can determine the most effective operation. Statutory language establishing an advisory committee, for example, can detail the name, purpose, authorities, and membership of an advisory committee—and these requirements likely would be placed in the committee’s charter.<sup>23</sup> In contrast, statutory language can direct an agency to establish a committee that examines a particular area of interest, and provide few additional details on operations and bylaws. Statutory language may be included in the charter, but the statute itself would not qualify as the charter.<sup>24</sup>

In all committee charters, the federal advisory committee is introduced by name, and then a brief statement of objectives and scope mission is offered. The charter’s language may include highlights of agency, presidential, or congressional findings that prompted the committee’s creation—but such findings are not required by FACA.

The charter must identify the authority for the establishment of the committee, including any statutes or other executive branch documents that authorized or required its creation. As noted above, advisory committees can be authorized by statute, required by statute, established by presidential directive, or established by agency authority. The President’s Advisory Commission on Educational Excellence for African Americans, for example, is required by Executive Order 13621 of July 26, 2012. Most recently, on September 30, 2013, E.O. 13652 extended the board’s operations through September 30, 2015. In contrast, the Marine Fisheries Advisory Committee was most recently chartered on April 17, 2014, by agency authority, through the Department of Commerce. Its mission is detailed in its charter, which is available in the FACA Database.<sup>25</sup>

Once committee authority is established, the charter includes a section on “duties” and objectives and scope, specifying the committee’s mandate or responsibilities. The National Advisory Committee on Children and Disasters (NACCD) within the Department of Health and Human Services, for example, has its duties delineated as follows:

The NACCD has been created to provide advice and consultation to the Secretary of Health and Human Services with respect to the medical and public health needs of children in relation to disasters.<sup>26</sup>

A committee’s objectives may be stated in specific terms—in statutory language or in the charter—to guide the federal advisory committee’s members and staff in carrying out their responsibilities. Charters should authorize enough autonomy to ensure that the advisory body provides independent advice that is not “inappropriately influenced by the appointing authority or by any special interest.”<sup>27</sup>

---

<sup>23</sup> An advisory committee’s charter is the official document that serves to articulate its name and purpose—among other items. Advisory committees are prohibited from operating until the affiliated agency files its charter with the affiliated agency’s oversight committees in Congress, the GSA Committee Management Secretariat, the Library of Congress, and the agency head.

<sup>24</sup> 5 U.S.C. (FACA) Appendix, §9(c). The charter is often filed with Congress by the committee management officer (CMO) within the advisory committee’s host agency. The CMO, among other duties assigned by the agency head provides for appropriate advisory committee recordkeeping. 41 C.F.R. §102-3.115. The agency head can authorize an official other than the CMO to file an advisory committee charter.

<sup>25</sup> See the FACA Database, at <http://facadatabase.gov/>.

<sup>26</sup> Ibid.

<sup>27</sup> 5 U.S.C. (FACA) Appendix, §5(b)(3). See also 41 C.F.R. §102-3.105(g).

## Membership

There are few restrictions on the membership of FACA committees. Pursuant to the act, each FACA committee must have at least one member who is not a “full-time, or permanent part-time” officer or employee of the federal government.<sup>28</sup> Membership must also “be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee.”<sup>29</sup> Federal ethics statutes and regulations also may affect committee membership.<sup>30</sup>

The size and structure of an advisory committee can affect the intended mission. For example, the size of the committee may be small enough to allow all members a chance to communicate their expertise and opinion, but large enough to include the appropriate stakeholders and maintain a quorum even when members are absent. Size and member appointment, therefore, largely depend on the committee’s functions and mission. Additionally, members can be appointed on a staggered schedule to ensure that there are always a few continuing committee members serving at any given time—allowing for greater continuity in operations over time. Some committees are designed to include specific members of the federal government or their designees. For example, the 13 committee members written into the charter of the Arizona National Scenic Trail Advisory Council are

- the regional forester of the Southwestern Region, Forest Service or a designee;
- the state director of the Arizona State Office, Bureau of Land Management (BLM) or a designee;
- the regional director of the Intermountain Region—National Park Service or a designee;
- a representative of the state of Arizona (selected from recommendations by the governor);
- at least one representative from Arizona State Parks;
- at least one representative from County or Municipal Parks and Recreation;
- at least one representative for tribes;
- at least two representatives from the National Scenic Trail and non-motorized trail users organizations;
- at least one representative from conservation organizations;
- at least one representative from gateway communities;
- at least one representative from the ranching industry; and
- at least one representative from private landholders.

Other committee charters contain specific language that describes certain qualifications or expertise required for membership. The Food Advisory Committee within the Food and Drug

---

<sup>28</sup> 5 U.S.C. (FACA) Appendix, §3.

<sup>29</sup> 5 U.S.C. (FACA) Appendix, §5.

<sup>30</sup> Federal ethics rules may prevent federal employees with a real or perceived conflict of interest from serving on certain advisory committees. Conflict of interest statutes and regulations from the U.S. Office of Government Ethics would apply to the members who serve on advisory bodies when the members are full-time federal employees or special government employees (SGEs), pursuant to 18 U.S.C. §202(a). SGEs must adhere to all federal ethics requirements in 18 U.S.C. §§201, 203, 205, 207, and 208. Advisory committee members who are designated as representatives (instead of SGEs) are not subject to the ethics requirements placed on federal employees.

Administration, for example, operates a 15-member committee to be filled by members with the following areas of expertise or qualifications:

- physical sciences;
- biological and life sciences;
- food science;
- risk assessment;
- nutrition;
- food technology;
- molecular biology;
- epidemiology; and
- other relevant scientific and technical disciplines.<sup>31</sup>

Still other charters include membership positions for Members of Congress, the President, or agency heads to appoint. By granting appointment powers to a variety of federal institutions and to those with a variety of viewpoints, a committee can gain a widespread base of support. With a varied membership or member appointment structure, however, the entity that established the committee may lose some control over its actions or direction. A multifarious membership may also make final recommendations more difficult to draft because there may be little agreement on what recommendations or advice should be given.

## **Compensation and Travel**

Advisory panel members who are not employees or officers of the federal government may or may not receive compensation for their work on a committee. The authority that establishes the committee may also determine whether committee members are to receive pay, and—if they are paid—their pay level. Neither committee members nor staff may be paid more than the equivalent of Executive Level IV (\$158,700 for 2015). Committee members and staff may also be paid for travel expenses as well as a per diem.<sup>32</sup>

## **Committee Staff**

Generally speaking, committees are comprised of members, and may also include consultants.<sup>33</sup> Agency support to the committee consists of the agency designated federal officer (DFO)<sup>34</sup>, who and may include additional agency support staff and an executive director (who may also serve as the DFO).

---

<sup>31</sup> The committee is authorized by 21 U.S.C. §394.

<sup>32</sup> Per diem rates vary by date and location. According to GSA, the lowest per diem is currently \$46 for meals and incidental expenses and \$83 for lodging, at <http://www.gsa.gov/portal/category/100120>.

<sup>33</sup> FACA entities may use the services of outside consultants in accordance with 5 U.S.C. §3109(b). Federal employees may also be detailed to staff an advisory committee.

<sup>34</sup> An advisory committee's sponsoring agency assigns a DFO to each advisory committee. Other duties of the DFO may include oversight of committee operations, maintenance of records for availability to the public, and provision of copies of committee reports to GSA's Committee Management Officer for forwarding to the Library of Congress. 5 U.S.C. (FACA) Appendix §10(3)(e).

## Committee Reports

In addition to a final report, some committees may be required to make interim or annual reports to the President, Congress, or agency heads. These reports are often listed in the “duties” section of a committee’s charter. A committee’s recommendations are strictly advisory and cannot mandate policy action by recipients of the report.

In the case of a presidential advisory committee,<sup>35</sup> however, the President must submit to Congress—within a year of receiving a committee’s public report—proposals for action or reasons for inaction on the recommendations in the public report.<sup>36</sup>

A statute that establishes a FACA committee may include additional provisions or requirements for agencies within the executive branch. For example, a statute establishing an advisory committee can also require the President to send a report to Congress with policy suggestions that are based on the committee’s final recommendations. The effort the President might put into creation of that report, however, may largely correspond to the Administration’s interest in the committee and its findings.

## Committee Authorities

Explicit authority may be needed to accomplish certain special duties for which an advisory committee may be responsible. For example, committees would need specific statutory authority to hold hearings, use the franking privilege,<sup>37</sup> accept certain donations, and permit volunteers to work on the staff. Vesting a committee with subpoena power is done on a very selective basis—and is largely dependent upon the mission of the panel. In the late 1990s, for example, Congress vested the National Gambling Impact Study Commission with subpoena authority.<sup>38</sup> One advisory committee’s charter, in contrast, explicitly denied the entity subpoena authority.<sup>39</sup>

## Bylaws and Procedures

Specific procedural requirements—like quorum qualifications—can often be found in some committee charters. Other bylaws, including election procedures to determine a chairperson, vote tallying, filling membership vacancies, and reporting procedures also may be included in the charter. In other cases, committee procedures may be included in the legislation that establishes an advisory body. If committee procedures are provided by statute, Congress may have greater control over the body’s operations, procedures, and outcomes. On the other hand, if procedures are in statute, the advisory body may not have the autonomy to conduct meetings that provide the optimal opportunity to share candid advice and present new ideas.

---

<sup>35</sup> A presidential advisory committee advises the President. See 5 U.S.C. (FACA) Appendix §3.

<sup>36</sup> 5 U.S.C. (FACA) Appendix §6.

<sup>37</sup> The franking privilege allows Members of Congress to transmit mail matter under their signature without postage. For more information on the franking privilege, see CRS Report RL34274, *Franking Privilege: Historical Development and Options for Change*, by Matthew E. Glassman.

<sup>38</sup> P.L. 104-169, §5(b).

<sup>39</sup> See the Cedar Creek & Bell Grove National Historical Park Advisory Commission Charter, available at the FACA Database, at <http://facadatabase.gov/>. The Cedar Creek & Bell Grove National Historical Park Advisory Commission is authorized by Congress to operate until December 8, 2020.

The DFO from the sponsoring agency is responsible for approving or calling the meeting of the committee, approving the committee agenda (except for presidential advisory committees), adjourning meetings when it is determined to be in the public interest, and certifying minutes.<sup>40</sup>

## Funding

Congress may directly fund a committee through the appropriations process, or it may carve out funding within an agency's annual appropriation. If provided the authority to do so in statute, an advisory committee may also be funded through private donations. A committee charter may include a determination, within a committee's provided authorities and requirements, as to whether an entity may accept such private financial gifts. If a committee is permitted to accept donations or other, in kind, gifts, the authority that created the advisory body may require detailed recordkeeping of such donations to maintain transparency and to avoid the perception of undue influence.

## Committee Termination

Unless statutorily mandated or otherwise extended by the President or a federal officer,<sup>41</sup> an advisory committee will automatically terminate, pursuant to FACA, two years after its establishment. Consequently, most advisory committees must renew their charters every two years. Some committees that are created by statute include provisions to terminate on specific dates or a particular number of years after their establishment.<sup>42</sup>

When establishing a committee by statute, a Member or staff may take into account the time and costs for administrative actions. The agency, for example, will need time to assign staff, find suitable office space, and address other logistical concerns. Upon completion of these objectives, the committee also will need additional time to create a final report, file any required records, and vacate the office space.

## Advisory Committee Establishment in the 114<sup>th</sup> Congress

Table 2 lists the seven advisory committees currently being considered for establishment in the 114<sup>th</sup> Congress.

---

<sup>40</sup> 41 C.F.R. §§102-3.120 and 102-3.165.

<sup>41</sup> The federal officer must be the agency head who established the advisory body. 5 U.S.C. (FACA) Appendix §14(A).

<sup>42</sup> See, for example, the National Maritime Heritage Grants Advisory Committee (16 U.S.C. §5404), which was required by law to terminate on September 30, 2000. The National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (42 U.S.C. §1314b) is required by law to terminate "five years after the date of its establishment [September 29, 2014]." Similarly, the Advisory Committee on Energy Efficiency Finance (42 U.S.C. §17124) is required by law to "terminate on the date that is 10 years after December 19, 2007."

**Table 2. Legislation Seeking to Establish Advisory Committees, 114<sup>th</sup> Congress**  
Presented in chronological order of their introduction in Congress

Committee Name	Legislation
Advisory Council on Sustainable Chemistry	S. 1447—Sustainable Chemistry Research and Development Act of 2015
Advisory Panel on Supervision of Therapeutic Hospital Outpatient Services	S. 257/H.R. 1611—Protecting Access to Rural Therapy Services Act; H.R. 3225—Save Rural Hospitals Act
Expert Advisory Panel Regarding Relative Value Scale Process Used in Medicare Physician Fee Schedule	S. 257/H.R. 1611—Protecting Access to Rural Therapy Services Act
Interagency Lyme and Tick-Borne Disease Working Group	H.R. 789—Tick-Borne Disease Research Accountability and Transparency Act of 2015
National Geospatial Advisory Committee	S. 740—Geospatial Data Act of 2015
Preventive Services Advisory Board	H.R. 1151/S. 1151—USPSTF Transparency and Accountability Act of 2015
Tick-Borne Diseases Advisory Committee	H.R. 665—To provide for the establishment of the Tick-Borne Diseases Advisory Committee; H.R. 789—Tick-Borne Disease Research Accountability and Transparency Act of 2015

**Source:** <http://www.congress.gov/>.

**Notes:** CRS searched <http://www.congress.gov/> for the term “FACA.” This table includes all committees that populated that search that stated FACA would apply to their operations.

## Author Contact Information

Wendy Ginsberg  
Analyst in American National Government  
[wginsberg@crs.loc.gov](mailto:wginsberg@crs.loc.gov), 7-3933

## Acknowledgments

Raymond T. Williams, formerly an Analyst in American National Government at the Congressional Research Service, contributed to this report.